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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 MASS, 3/F

Washington, D.C. 20536

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

**AUG 29 2003**

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church, seeking classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ her as a pastoral assistant.

The director denied the petition, finding that the petitioner failed to establish that the offered position qualifies as a religious occupation for the purpose of special immigrant classification, and that the beneficiary has had the requisite two years of continuous experience in a religious occupation. The director further found that the petitioner failed to establish that it had the ability to pay the proffered wage.

On appeal, the petitioner submits additional documentation. An individual purporting to represent the petitioner failed to submit a Form G-28 Notice of Entry of Appearance, so a copy of this decision will not be sent to that individual. 8 C.F.R. § 292.4.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a 51-year old native and citizen of Guyana. According to the Bureau's records, the beneficiary entered the United States as a B-1 nonimmigrant visitor for business on September 11, 1993.

The first issue to be addressed in this proceeding is whether the petitioner established that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

In a letter dated April 17, 2002, the petitioner's Senior Pastor described the job duties as follows:

Assist clergy in conducting Christian education and prayer ministry. Plan and arrange educational and counseling/prayer activities for staff/congregation. [sic] Asisting [sic] in selecting books, reference materials for religious education and training classes. Provide leadership in community projects and offering family services. Assist in designing outreach programs.

The director noted that the petitioner failed to explain the required qualifications of a "pastoral aide" and to provide the Bureau with a letter from an authorized official of its denomination verifying the denomination's recognition of the beneficiary's credentials as a pastoral aide. The director determined that the evidence was insufficient to establish that the

proffered position qualifies as a religious occupation.

On appeal, the petitioner asserts that the beneficiary is a dedicated religious worker in the petitioner's organization. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the absence of evidence that the proffered position is a traditional full-time salaried position in the church or its denomination, the record is insufficient to establish that the position of "pastoral aide (counseling assistant)" qualifies as a religious occupation.

The next issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least April 21, 1999.

The petitioner submitted a letter from the Senior Pastor, stating that:

[The beneficiary] volunteered her time to the [petitioner] organization since she came directly from an affiliated congregation in Guyana.

In a separate letter, the Senior Pastor wrote that the beneficiary had been working in several ministries in the church including the telephone counseling ministry, the altar workers ministry, as an Christian education teacher and as a Royal Rangers leader. The Senior Pastor indicated that the beneficiary spent at least thirteen hours a week on these activities.

The director determined that the petitioner had failed to establish that the beneficiary has the required two years of continuous experience in a religious occupation.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. Because the statute requires two years of continuous

experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

The legislative history of the religious worker provision of the Immigration Act of 1990<sup>1</sup> states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

In *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com. 1963), the Commissioner determined that if the beneficiary were to receive no salary for church work, he would be required to earn a living by obtaining other employment. In analogous reasoning, the Bureau determines that unpaid experience does not qualify as the beneficiary must have sought outside employment to support herself. Further, without income tax returns and W-2's, the Bureau is unable to determine how and whether the beneficiary has been employed.

The director denied the petition, in part, finding that the petitioner failed to provide sufficient evidence of its ability to pay the beneficiary. The petitioner failed to address this issue on appeal.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements that are current as of the date of filing the petition. Therefore, the petitioner has not satisfied the documentary requirement. For this reason as well, the petition may not be approved.

In review, the petitioner has failed to overcome the director's objection to approving the petition.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's

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<sup>1</sup> Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.